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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT 3 1 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Policies and Rules Implementing )

the Telephone Disclosure and Dispute )

Resolution Act )

CC Docket No. 93-22

ORIGINAL

REPLY

BellSouth Telecommunications, Inc. ("BellSouth")

herewith submits reply comments to the Order on

Reconsideration and Further Notice of Proposed Rulemaking

issued in the above-referenced proceeding ("FNPRM").<sup>1</sup>

BellSouth continues to favor the majority of rule changes proposed in the FNPRM. Additionally, BellSouth restates its support for legislative amendments which will prohibit use of the 800 service access code (SAC) to provision information services and which will eliminate the exemption from pay-per-call requirements accorded such services when offered pursuant to a tariffed charge. The Commission should consider sponsorship of these initiatives as the most effective means of addressing persistent abuses in the pay-per-call/information services industry.

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<sup>1</sup> Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, FCC 94-200, Order on Reconsideration and Further Notice of Proposed Rulemaking, released August 31, 1994.

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In response to certain matters raised by other filing parties, BellSouth offers the following:

1. LIDB Enhancement/Provision of 900 Blocking Information

900 Capital Services, Inc. ("Capital") and International Telemedia Associates ("ITA") advocate that the Commission require LECs to include a 900 blocking indicator with subscriber information available through the Line Information Data Base (LIDB) and/or to provide 900 blocking data as a discreet offering to information providers (IPs) and billing clearinghouses. Capital and ITA maintain that this information could be successfully employed in presubscription activities, supplanting any need for a written agreement. Further, they argue that 900 blocking data--if made generally available--would be of considerable value for billing validation purposes.<sup>2</sup>

BellSouth wishes to encourage IP efforts to address current problems in the pay-per-call/information services industry and to provide assistance where possible. Nevertheless, after consideration of the Capital and ITA proposals, BellSouth is persuaded that they could not be readily implemented nor would they offer a comprehensive solution to the problems now confronting the industry.

An enhancement adding the 900 blocking indicator to LIDB would have to be undertaken by Bellcore and would


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<sup>2</sup> Capital, pp. 7-9; ITA, pp. 4-7.

require modifications not only of LIDB but also of various LEC support systems. While such an enhancement is clearly possible, it is estimated that full implementation would require a minimum of one year, which BellSouth understands to be an unacceptable interval. To achieve full coverage all LEC data base owners would have to add the enhancement. Further, there are substantial issues respecting liability for data base errors/omissions which have yet to be addressed. Lastly, effectiveness of any LIDB enhancement would be entirely dependent upon the willingness of IPs/billing clearinghouses to query the system. At this time widespread usage by industry participants cannot be presumed.

Provision of 900 blocking data, either through access to BellSouth systems or through an abstract, is likewise problematic. Currently, 900 blocking information does not reside in a separate data base. Substantial programming changes would be required to make it readily accessible. Moreover, the information would need to be updated on a daily basis to be useful for its intended purpose. BellSouth's maintenance responsibilities and its liability for data base errors/omissions would have to be determined in advance of any offering.

BellSouth is further concerned that 900 blocking information available to it would be significantly under-



PBX/switch, a practice which cannot be detected by BellSouth. In addition, many subscribers who find it unnecessary to block 900 may nevertheless wish to block 800 presubscription services because of the longstanding association of the 800 SAC with toll free dialing. None of these customers would be identified through provision of 900 blocking data.

900 blocking data arguably constitutes customer proprietary network information (CPNI), requiring customer consent prior to third party release or waiver of the Commission's CPNI rules.<sup>3</sup> Finally, as is true of the LIDB enhancement, there is no assurance that all (or substantially all) IPs and billing clearinghouses would use the 900 blocking data available for presubscription and billing validation functions. For all of the foregoing reasons, the proposals of Capital and ITA do not represent a workable solution to the issues surrounding presubscription and billing validation.

## 2. Selective Number Blocking

The National Association of Consumer Agency Administrators ("NACAA") asks the Commission to initiate a

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<sup>3</sup> See, e.g., Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Phase II Order, 2 FCC Rcd 3072, 3093-98 (1987), Phase II Reconsideration Order, 3 FCC Rcd 1150, 1161-64 (1988); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7609-14 (1991), pet. for recon. pending, vacated in part sub nom. California v. FCC, No. 92-70083, Slip Op. (9th Cir. Oct 13, 1994).

rulemaking which would consider the application of network blocking to individual program services accessed through international numbers.<sup>4</sup> The issue of selective number blocking was fully considered earlier in this proceeding and rejected by the Commission as an inefficient use of switch capacity, given that substantial network intelligence would be consumed to serve negligible demand.<sup>5</sup> NACAA provides no new evidence which would warrant disturbance of this finding or justify the expenditure of Commission resources in a rulemaking. Accordingly, this proposal must be denied.

### 3. 800 Collect Calls

The Association of Information Providers ("AIP") argues that use of the 800 SAC is permissible in an arrangement where the party dialing 800 is called back collect by the IP. It is claimed that commission payments to the IP by the interexchange carrier transporting the collect call do not

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<sup>4</sup> NACAA, p. 5. BellSouth also expressed its concern over use of international numbers to provide information services. See BellSouth Comments pp. 7-8.

<sup>5</sup> "We conclude that selective blocking options for interstate pay-per-call services are not technically or economically feasible at this time. The record in this proceeding demonstrates that wholesale switch modifications or replacements would be necessary to accomplish the full ten digit screening necessary to accomplish a service-specific block. Moreover, even if such upgrades were to be made, we agree with those commenters who note that selective blocking would be an inefficient use of switch capacity, especially given the dearth of evidence indicating any appreciable demand for such service." Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, Report and Order, 8 FCC Rcd 6885 at ¶ 63 (1993).

constitute an unlawful rebate. AIP further maintains that these arrangements are not an evasion of pay-per-call requirements. AIP points out that the charge for the collect call is tariffed, thus bringing the service within one of the enumerated pay-per-call exemptions which do not require access through the 900 SAC.<sup>6</sup>

Although its initial premises are correct, AIP's ultimate conclusion is wrong. The service described is clearly unlawful under Section 228(c)(6)(D) of the Communications Act, 47 U.S.C. § 228(c)(6)(D), prohibiting use of the 800 SAC in an arrangement which results in the calling party being called back collect to receive programming services. While it is true that payment of an IP commission in these circumstances does not constitute an unlawful rebate,<sup>7</sup> this fact alone will not rehabilitate the proposed offering. The transmission service rendered by the IXC remains subject to the "just and reasonable" standard of Section 201, 47 U.S.C. § 201, which prohibits both excessive rate levels and the imposition of inequitable service conditions. There can be little doubt that this standard is violated by incorporating an IP commission within the tariffed rate, particularly when done in furtherance of a

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<sup>6</sup> AIP, pp. 6-7.

<sup>7</sup> See Telesphere International, Inc. v. AT&T, File No. E-88-75, DA 93-916, Memorandum Opinion and Order, 8 FCC Rcd 4945 (1993), (no rebate issue raised where party receiving carrier payment is not the party liable for tariffed charge).

service arrangement which has already been declared unlawful.

Services like the one described by AIP underscore BellSouth's argument that the tariffed charge exemption is subject to continuing abuse. The Commission should support Congressional action aimed at removing this provision from the Telephone Disclosure and Dispute Resolution Act (TDDRA). At a minimum, the Commission will be required to closely scrutinize tariffed offerings associated with the provision of information services to insure that these are not used to undermine the consumer protections intended by the Act and the Commission's implementing regulations.<sup>8</sup>

#### 4. LEC Enforcement Responsibility

The Minnesota Office of Attorney General ("MN-OAG") claims that LEC billing practices have exacerbated (or even created) some of those problems recently observed in provisioning of 800 presubscription services. MN-OAG

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<sup>8</sup> Some parties advocate extension of 800 number restrictions contained in Section 64.1504 of the Rules, 47 C.F.R. § 64.1504, to 10XXX, international and other dialing arrangements used to provide information services. See, e.g., Southwestern Bell, pp. 10-13; APCC, pp. 3-4. BellSouth would support such a measure in the absence of legislative action making all information services subject to full pay-per-call requirements. BellSouth also agrees with suggestions by MCI that the Commission take enforcement action against the tariffing of non-communications services and that IXCs include a tariff provision requiring callers to information programs offered through toll or international numbers to be advised that toll/international rates will apply. MCI, pp. 9-10. Finally, BellSouth finds merit in AIP's suggestion to employ a toll free 900 number in lieu of a written agreement to accomplish presubscription. AIP, p. 4.

insists that LECs assume more enforcement responsibility, and to that end, favors rule amendments which require LECs to verify the existence of a valid presubscription agreement and to insure that billing is rendered only to the party signing such an agreement.<sup>9</sup>

These views reveal a lack of understanding of LEC billing functions and the operation of LEC billing systems. As explained in BellSouth's initial comments, there is no contractual relationship between IPs and the billing LEC and no ready means to ascertain the identity of the former. Indeed, many IPs maintain no presence within BellSouth's region. Given these circumstances, it would be impossible for BellSouth to obtain a presubscription agreement relative to every qualifying message submitted for billing, verify the sufficiency of each agreement and the correctness of the billed party and accomplish all of these tasks within an interval which insures timely bill production. Nevertheless, this is the obligation which rule changes cited by MN-OAG would impose on BellSouth and other LEC billing agents.

Moreover, even if these responsibilities were successfully discharged by the LEC, the likely result would be further migration of information services to 10XXX, international and other dialing arrangements. As previously explained, such messages when submitted for billing are

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<sup>9</sup> MN-OAG, pp. 17-20.

indistinguishable from ordinary transmission service charges, rendering effective LEC enforcement of statutory and regulatory requirements an impossibility.

The problems which currently exist in provisioning of pay-per-call/information services cannot be solved by increasing the administrative burdens of LEC billing agents. They can only be addressed by eliminating (or at a minimum, significantly restricting) the availability of current exemptions for information programming delivered over the 800 SAC or pursuant to a tariffed charge.<sup>10</sup>

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<sup>10</sup> In contrast to MN-OAG, other commenting parties display considerable knowledge of the LECs' role in billing and collections and the obstacles confronting any LEC enforcement activity. See Comments of PaPuc et al., pp. 7-9; Comments of ISA, pp. 5-6.

CONCLUSION

The Commission should implement rule changes for pay-per-call/information services which are consistent with the views expressed herein and in the initial comments of BellSouth. Since Congressional action affords the greatest promise for addressing abuses now prevalent in the industry, the Commission should further consider sponsorship of legislation to eliminate current exemptions for programming offered through the 800 SAC or pursuant to a tariffed charge.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of October, 1994 served all parties to this action with a copy of the foregoing REPLY by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

  
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